No. 82-2077

In the Supreme Court of the United States

OCTOBER TERM, 1982

CLAIR OLSEN and GUITAR CITY STUDIOS, INC.,
a Utah corporation,
Petitioners,

vs.

PROGRESSIVE MUSIC SUPPLY, INC., NORLIN MUSIC, INC.,
formerly CHICAGO MUSICAL INSTRUMENTS, and
PEAVEY ELECTRONICS CORPORATION,
Respondents.

PETITIONERS' REPLY BRIEF TO THE BRIEF OF RESPONDENT PEAVEY ELECTRONICS CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

and

BRIEF IN SUPPORT OF MOTION OF RESPONDENT PEAVEY ELECTRONICS CORPORATION FOR DAMAGES PURSUANT TO SUPREME COURT RULE

LOWELL V. SUMMERHAYS
EDWARD T. WELLS
Counsel of Record

W. ANDREW CLAWSON
SUMMERHAYS, WELLS
& CLAWSON

420 Continental Bank Bldg.
Salt Lake City, Utah 84101

Attorneys for Petitioners

QUESTIONS PRESENTED

I.

Will this court allow the dismissal of Respondent Peavey when that dismissal would be in conflict with and a departure from current standards of antitrust law as articulated by this court and other circuit courts?

II.

Will this court award damages to an antitrust defendant who was associated with a proven per se illegal violation of the antitrust laws, after defendant refused to make himself available as a witness at trial and failed to offer any evidence of a pro competitive purpose?

[This Page Intentionally Left Blank]

TABLE OF CONTENTS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

TABLE OF CONTENTS

SUMMARY OF THE ARGUMENT

The argument is set forth in two points. Point I shows that Peavey and Progressive had an exclusive dealing agreement in Utah. That agreement was parallel to and coexistent with a per se illegal conspiracy. That agreement was in a relevant product market and was an exception to Peavey's normal distribution policy. That agreement produced exactly the same market effect which was found to be per se illegal between CBS and Progressive. In the face of this anticompetitive market effect Peavey refused to make itself available as a witness during Plaintiffs case and offered no evidence of a pro competitive purpose. The dismissal of Peavey under these circumstances without examination for economic harm is in conflict with this Courts holdings as to per se and the rule of reason standards of antitrust law. Point II shows that Peavey's motion for damages under this Courts Rule 49.2 is without merit and does not meet the legal requirements to impose such sanctions.

ARGUMENT

POINT I

THE REQUIREMENTS OF THIS COURT'S RULE 17 ARE SATISFIED AS TO DEFENDANT PEAVEY REMAINING IN THE CASE.

A. *Peavey and Progressive by agreement created an exclusionary anticompetitive price fixing combination in the state of Utah thereby per se violating the antitrust laws.*

Progressive and Peavey fixed prices in an exclusionary anti-competitive agreement. This was accomplished by Peavey granting Progressive an exclusive dealing

arrangement in the state of Utah, then withholding national advertizing of Peavey's low suggested list prices by agreement with Progressive so that Progressive could fix prices and sell Peavey's products without competition at prices substantially above Peavey's suggested list prices. Prior to this agreement, Peavey's normal business practice was to advertise its low suggested list prices to gain market entrance. *See* TT April 30, 1979, page 59, lines 22-25, and p. 60, lines 1 and 2, (undisputed testimony of Michael Draper, former employee of Progressive Music). The trial court misquoted this testimony in its dismissal of Peavey. *See* Peavey Brief at page 8a. The courts interpreted Draper's testimony to mean the withholding of advertising to be a single exception in a single trade magazine, while his testimony establishes a continuing practice in *any trade magazine*. *See* Appendix A attached, pages 59 to 63, TT April 30, 1979. Of critical importance is the fact that the trial court did not have a copy of the April 30, 1979 Trial Transcript to review prior to dismissing Peavey. This is verified by the case docketing sheet. Also six other volumes of the trial transcripts containing Petitioner's expert economic testimony were not before the Trial Court during the decision making process. That issue was raised on appeal and dismissed. Appellants' 10th Circuit Brief at p. 61.

The agreement between Progressive and Peavey was an exception to Peavey's normal distribution system. See Appendix A page 62, line 14-25, and page 63, lines 1-5.

Peavey argues that Petitioners' cited case *Com-Tel v. Dukane Corp.*, 629 F. 2d 404 (6th Cir. 1982) does not apply since Olsen was not singled out. Peavey refused to deal with anyone in Utah except Progressive to protect the price fix. Respondents misread *Com-Tel*. *See*

notes [1-2] at page 409. The court cites from *GTE Sylvania*, where the stifling of competition at the horizontal level when applied vertically invokes the per se illegal rule. Therefore, the stifling of intrabrand competition in the state of Utah caused by Peavey's refusal to deal to protect Progressive's price fix is a per se violation of the antitrust laws. The failure of the lower courts to apply the per se rule is in conflict with this courts holdings in *U.S. v. Socony Vacuum Oil Co.*, 310 U.S. 150 at 221, 223:

> A combination formed for the purpose and with *the effect of raising, depressing, fixing, pegging, or stabilizing the prices* of a commodity in interstate or foreign commerce is illegal per se. Emphasis added.

The dismissal of Peavey is also in conflict with other holdings that the withholding of advertising to allow price fixing is an antitrust violation. *See Schnapps Shop v. H. W. Wright Ltd.*, 377 F. Supp. 570, at p. 581 (D. My. 1973).

B. *The dismissal of Peavey by the lower courts is in conflict with this courts holdings under current Rule of Reason standards.*

The dismissal of Peavey without requiring any evidence of a pro-competitive purpose after an anti-competitive effect was proven in a relevant product market and after Peavey refused to make itself available as a witness is in conflict with and inconsistent with this Court's holding in *Continental TV v. GTE Sylvania*, 433 U.S. 36, 97 S. Ct. 2549, 2554 (1977), n. 15 citing Justice Brandies in *Chicago Board of Trade. See GTE* at p. 2556, n. 14 citing *Schwinn*, 389 U.S. at 379. Clearly it is the burden of the Defendant to prove a pro-com-

petitive purpose after an anti-competitive effect has been proved by the plaintiff.

Peavey argues that it is entitled to dismissal under the *GTE* Rule of reason because it was a new market entrant and was unable to compete. Peavey Brief at p. 10. The lower court accepted that argument. Peavey Brief at pages 9a and 10a. The undisputed domonstrable economic evidence is to the contrary of Peavey's argument and the court's findings. *See* Appendix B, Trial Exhibit 217b attached as Appendix B, (Peavey was Progressive's largest supplier.). This fact is significant because Peavey not only competed but surpassed the sales of the number one leader in the trade, CBS Musical Instruments. CBS was the leading product in the trade during the relevant period. Trial Exh. P-158. Peavey argues it was really unable to compete on the open market. The court so found, without having seven (7) volumes of the trial transcripts, three of which were the critical testimony of Plaintiffs' economic expert. Revealing the lower court failed to consider how Peavey could become the sales leader in Utah under a price fixing agreement.

C. *Peavey is a co-conspirator in the per se illegal boycott proved in the lower courts and the refusal of Peavey to testify infers favorable inference for the Plaintiffs that were never made.*

Peavey asserts Olsen did not prove a group boycott. This agreement is incorrect because the petitioners demonstrated the boycott existed. *See* Petition for Certiorari, Appendix A, at p. 13a. Olsen's theory of group boycott is based on *Klors v. Broadway Hales Stores*, 359 U.S. 207 (1959). The petitioners specifically claim a *Wedge Shaped* conspiracy where an oligopolist at the

horizontal competitive level causes a vertical refusal to deal to prevent price competition. *See* 68 Yale Law Journal at 949. In support of that theory, substantial evidence was submitted at trial proving Peavey to be a co-conspirator. Progressive was the state's largest or an oligopoly dealer. Trial Exh. P-103. Petitioners' economic expert, after studying the market, testified that Progressive had cornered the best lines in the trade to cartel extremes. TT May 23, 1979, pp 18-22. All of the defendant manufacturers dealing arrangements in Utah were illogical and could be expected to produce anti-competitive effects. TT May 29, 1979, PP 111-114. Defendants produced no economic expert to dispute this testimony and, as verified by the docketing sheets, the trial judge did not have this testimony before him to review prior to dismissing Peavey. Michael Draper testified that it was the business policy of Progressive to be protected from price competition. TT April 30, 1979, page 22, lines 13-17. Testimony also stated Progressive, as the state's largest dealer, would threaten manufacturers with the loss of Progressive's business if they dealt with Olsen. TT April 30, 1979, page 71, lines 11-16 and TT Vol. 1, page 2. The dismissal of Peavey in the face of such strong undisputed evidence is in conflict with this Court's long standing and consistent interpretations of the antitrust laws. *See GTE Sylvania supra* 433 U.S. at 49 citing *Standard Oil.* The dismissal of Peavey is also in conflict with other Circuit's interpretations of the Federal Rules. *See* Moore's Federal Practice, page 41-192 n. 9 & 10 citing *Riegal Riber v. Anderson Gin Company,* 512 F. 2d 784 (5th Cir. 1975) as the leading case.

Petitioners' evidence against Peavey is stronger than the *Klors case supra.* In this case, Peavey joined the group boycott by refusing to deal with Olsen while at

the same time allowing Progressive to sell Peavey products under Olsen's trade name. It is undisputed that Progressive infringed and advertised Olsen's trade name in furtherance of the proven per se illegal conspiracy. It is also undisputed that the 10th Circuit Court dismissed the infringement and other unfair competition issues in silence, disregarding Fed. R. Civ. P. 52(a) & 8 (e)(2), Federal Statutes 15 U.S.C. 1125(a) & 28 U.S.C. 1338(b) and this Court's mandate in *Hurn Oursler*, 289 U.S. 238 (1932). *See* Petition for Cert. POINT II. In spite of this travesty of justice and the failure of the trial court to have in its possession for review seven (7) volumes of the trial transcripts, which included all of the critical expert economic evidence and the undisputed testimony of Michael Draper showing Peavey's involvement in the price fixing conspiracy, Peavey asks this Court to rely on the lower court decision as being accurate and without error.

Peavey further argues that Olsen is not entitled to any favorable inferences under this Court's holdings in *Continental Ore v. Union Carbide & Carbon Corp.*, 370 U. S. 609 (1962) and that the dismissal of Peavey under a Fed. R. Civ. P. 41(b) motion did not dismember the conspiracy under that same standard. Petitioners believe that Peavey's assertions are in conflict with *Continental Ore supra*, but also are specifically in conflict with this Court's holdings as to Rule 41(b) dismissals and antitrust law. *See* Moores *supra* at page 41-184, n. 7, citing *U.S. v. Gypsum Co.*, 333 U.S. 364 (1946) where the Court reversed a Rule 41(b) dismissal when a violation of the Serman Act was apparent. It is also clear in Moores *supra* that Rule 41(b) dismissls are not to be made if Plaintiff's evidence shows a right to relief. *See* Moores at page 41-173, n. 5. Clearly Petitioners meet this Court's standard to reverse the

Rule 41(b) dismissal because 1) The Trial Court erroneously failed to consider the statutory right of relief on the issues of unfair competition as they related to the proven conspiracy, 2) The Trial Court failed to review or consider the expert economic testimony during the decision making process, 3) The Trial Court failed to consider or review undisputed testimony of Peavey's involvement in the price fixing. See Appendix A and B) Trial Exhibit P-217(b) requires that Peavey's exclusive dealing with Progressive be examined for economic harm where an anti-competitive effect was proven in a relevant product market.

Clearly the Petitioners have met their burden of providing that small amount of additional proof required to join a defendant to a proven conspiracy under the standards of *U.S. v. Cadillac Overall Supply*, 568 F. 2d 1078 (5th Cir. 1978, the 10th Circuit's similar holdings in *Morton Salt v. Royal Crystal Salt*, 235 F. 2d 573 (1956) and this Court's holdings in *U. S. Gypsum, supra.*

The lower courts failed to make other favorable inferences for petitioners which should have been made under antitrust law holdings by this court. *See U.S. v. Interstate Circuit*, 306 U.S. 206 at 226, where the failure to testify infers favorable inferences. The lower courts' dismissal of Peavey when it refused to testify is in conflict with this Court's holdings in *Interstate Circuit.* The failure of the lower courts to review Petitioners' expert economic testimony and the contemporaneous documents demonstrating the economic effect is in conflict with this Court's holdings. *U.S. v. U.S. Gypsum*, 333 U.S. 364 (1946) at n. 7-9. *Gypsum* makes it clear that contemporaneous documents take preference over the testimony which is conflicting, and the

demonstrable economic effect proven by petitioners requires, as a very minimum standard, that Peavey remain in the case to prove its pro-competitive purpose. *GTE Sylvania supra*, 433 U.S. at 59.

D. *Dismissal of Petitioners' relevant product market by the lower courts is in conflict with this court's holdings in Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 376 (1927).*

Peavey unethically and incorrectly argues that Olsen raises a new relevant product market for the first time on appeal. Peavey Brief at p. 12. Olsen's relevant product market has consistently been professional musical instruments in the frets, electronics, and percussion field (hereinafter FEP instruments). FEP instruments are recognized in the trade as a separate and distinct market. Trial Exhibit P-209. Peavey wrongly asserts Olsen's product market is vague and unproven. A complete detailed breakdown of the FEP as professional rather than amateur is set forth in PLAINTIFFS' MEMORANDUM IN OPPOSITION TO PROGRESSIVE MUSIC SUPPLY, INC.'S MOTION FOR SUMMARY JUDGMENT, 20 July 1977, at POINT II, A, 2. The distinction that the instruments are professional rather than amateur, is set forth in PLAINTIFFS' MEMORANDUM *supra* at POINT II, A, 2(e). The dismissal of Plaintiffs' relevant product market as professional instruments is in conflict with this Court's holding in *Kodak*.

Under the line of cases cited by Peavey, Petitioners have proven an anti-competitive effect in a relevant product market. Peavey is required under that standard to prove if possible a pro-competitive purpose.

POINT II

RESPONDENT PEAVEY'S USE OF SUPREME COURT RULE 49.2 TO CLAIM DAMAGES IS WITHOUT MERIT.

Peavey cites very current Supreme Court cases in support of their claim for damages. Peavey petition at page 16-17. A correct citing to find these cases is 51 U.S.L.W. 6-14-83 at 3883. These cases are distinguishable from our case where they failed to pay filing fees or to submit a proper petition under this Court's Rule 33, causing delay and in attempting to proceed in forma pauperis. No such issues exist in our case.

Peavey also cites *N.L.R.B. v. Catalina Yachts*, (679 F. 2d 180, 182 9th Cir. 1982), see n. 5, which defines when a case is frivolous showing:

An appeal is frivolous when the outcome is obvious. This case does not meet the standard for frivolity because the outcome is not obvious. The best evidence the court could have of this is the fact that not one of the defendants, including Peavey, has raised any argument to defend, oppose or even dispute Petitioners' statutory due process argument. By failing to deny these arguments, the defendants have placed themselves in a position of agreement that Petitioners have been denied due process.

The application of this Court's Rule 49 for damages is found in 13 Moores Federal Practice, Rule 49, page SC49-6:

> The imposition of such sanctions however is *highly unusual and requires a clear showing of bad faith.*

Emphasis added. Moores cites *State of West Virginia v. Chas Phizer & Co.*, 440 F. 2d 1079 (2d Cir. 1971) as the leading case. No clear showing of bad faith has been shown, proved or even alleged in our case. It would be uniquely original to impose sanctions for an attempt to obtain Constitutional due process at the Supreme Court. Such a precedent would defeat and be a deterrent to the purpose entrusted by Congress to the private litigant and be in conflict with this Court's holding in *Minnesota Mining & Mfg. Co. v. New Jersey Wood Finishing Co.*, 381 U.S. 311 (1965).

CONCLUSION

For all of the foregoing Peavey should remain in the case and its motion for damages should be denied. For brevity, authorities which have been reproduced in previously submitted briefs are not reproduced herein.

Respectfully submitted,

By .....
Lowell V. Summerhay

SUMMERHAYS, WELLS & CLAWSON

By .....
Edward T. Wells

By .....
W. Andrew Clawson

Attorneys for Petitioner

APPENDIX A

(Emphasis by Petitioners)

commissions from Guild?

MR. CROCKETT: Objection. That is leading.

MR. SUMMERHAYS: That is what he said.

THE COURT: You may answer.

THE WITNESS: Yes. Don told me that he had called the President of Guild and had Chuck's commissions lifted from all Progresive's sales of Guild.

BY MR. SUMMERHAYS:

Q Did you ever have a conversation with Mr. Don Penman in 1974 about a Peavey price list?

A Yes.

Q Where did that conversation occur?

A Music Wholesale?

Q And who was present?

A Don Penman and myself.

Q Do you remember approximately what time in the year?

A No, I don't.

Q What was said, and by whom on that occasion?

A Don Penman said to Hartley Peavey—

Q This is what Don Penman is telling you that he told Hartley Peavey?

A *Yes, Hartley wouldn't publicize prices in any trade magazine and Hartley published a list price so Don told me he called Hartley and reminded Hartley that he said he wouldn't publish a list price and Hartley—Don told me*

that Hartley said that he would not publish the list again. And subsequently, the next month it wasn't in the magazine.

Q Do you know why he did that?

MR. CROCKET: Objection, no foundation.

THE WITNESS: No.

MR. SUMMERHAYS: Well, wait a minute, wait until the judge rules.

THE COURT: The answer may stand.

BY MR. SUMMERHAYS:

Q I'm sorry. Your answer was no?

A No.

Q Did Don say anything about that on that occasion?

A Yes.

Q What did he say?

A *Don told me that he had asked Hartley years back not to publish any list prices because the retailers could get more for the product. It cost them so much money to bring the product in and to inventory the product in larger quantities so that they need more room to carry that kind of inventory.*

Q How much —

THE COURT: Just a minute. Would you repeat again what he told you that has been said on the conversation on the phone he had with Peavey?

THE WITNESS: What was that again?

MR. SUMMERHAYS: Repeat what you said about what Mr. Penman told you that he had said in a conversation with Mr. Peavey on the phone. In other words, repeat what you have said about this episode.

THE WITNESS: *Don said that he had talked to Hartley on the phone about the magazine article with the publicized price. He had called Hartley and reminded Hartley because Hartley had said earlier that he would not publicize a list price and Don reminded Hartley of that fact.*

BY MR. SUMMERHAYS:

Q Now, do you know what he was referring to when he said Hartley published a list price? Was that—

A Suggested list price.

Q Was that Penman's suggested list price that he had you print that he was talking about?

A I don't know if I understood the question.

Q Well, which list price was Mr. Penman talking about to Mr. Peavey?

A Mr. Peavey's price list.

Q Now, what did he say about the list price?

A What did Don say about the list price?

Q Yes.

A Don just asked Hartley not to publish the list price because out here in Utah—if I remember his exact words, out here in Utah because of freight, and because of

larger inventories and inventory expenses that he needed to get more retail money out of the product because of costs.

Q Did you have any experience as a salesman with the general public on that point?

A Yes.

Q What was that experience? I just want a summary of the experience, not any particular conversation.

MR. CROCKETT: Your Honor, I think he is calling for a narrative answer, and I'm not even sure what he is asking by the question. Experience with the public. It is overly broad and ambiguous at least.

THE COURT: It appears to be.

BY MR. SUMMERHAYS:

Q In your sales of Peavey instruments, what experience, if any, did you make or have or observe in trying to sell the Peavey instruments at Penman's list price rather than Peavey's list price?

MR. CROCKETT: I don't understand, Your Honor, I have the same objection. He is asking what the public told him. It is hearsay.

MR. SUMMERHAYS: No, it is not, Your Honor. It is a commercial activity which he is entitled to relate in the summary of the impact of his business experience.

THE COURT: He may answer.

THE WITNESS: *Progressive's list price was higher*

than other states' list prices. I had the occasion while I worked at Progressive, and I had the occasion while I worked at Music Wholesale going to other states and seeing that the list price in other states was lower than the list price in Utah.

BY MR. SUMMERHAYS:

Q Do you have any other experience in that regard with customers?

A No.

Q Are you currently selling musical instruments to Progressive Music from Pacific Musics?

A No.

Q Are you selling them to a wholesale music supplier?

A No.

Q Are you selling any items to any entity that Don Penman owns?

A Occasionally.

Q Do you sell any items to Mr. Olsen or any corporation that he owns?

A Yes.

Q Do you sell them in large quantities?

A No.

Q How much, to your knowledge, in dollar value, if you can recall, did you sell to him last year?

MR. SAVAGE: Olsen?

THIS PAGE INTENTIONALLY
LEFT BLANK

ANALYSIS OF THE WHOLESALE VALUE OF PURCHASES BY PROGRESSIVE MUSIC OF ELECTRIC GUITARS,[1] ACOUSTIC GUITARS, AMPLIFIERS (DEFINITION B),[3] AND SYNTHESIZERS 1971-1975

(Prepared June 8, 1979)

Manufacturer	1971 (Dollars) (1)	Percent Of Total (Percent) (2)	1972 (Dollars) (3)	Percent Of Total (Percent) (4)	1973[2] (Dollars) (5)	Percent Of Total (Percent) (6)	1974 (Dollars) (7)	Percent Of Total (Percent) (8)	1975 (Dollars) (9)	Percent Of Total (Percent) (10)	Total (Dollars) (11)	Percent Of Total (Percent) (12)
Peavey	$23,246.75	25.71%	$ 64,519.79	42.18%	$ 91,596.75	43.02%	$ 57,412.75	28.27%	$ 34,171.25	21.66%	$270,947.29	33.16%
CBS	39,926.15	44.15	30,416.50	19.88	29,262.50	13.74	27,900.25	13.74	24,168.50	15.32	151,673.90	18.56
Norlin	9,999.90	11.06	14,306.83	9.35	26,082.09	12.25	37,010.82	18.22	21,719.92	13.77	109,119.56	13.35
C. F. Martin	7,377.50	8.16	12,750.00	8.33	15,277.50	7.18	36,100.00	17.78	8,575.00	5.43	80,080.00	9.80
Acoustic	5,443.50	6.02	4,089.50	2.67	12,173.50	5.72	13,099.00	6.45	14,166.00	8.98	48,971.50	5.99
Guild	1,302.50	1.44	8,635.00	5.64	11,937.50	5.61	8,025.00	3.95	9,287.00	5.89	39,187.00	4.80
ARP	—	—	7,987.05	5.22	777.00	0.36	8,160.60	4.02	18,854.45	11.95	35,779.10	4.38
Ovation	976.50	1.08	3,974.95	2.60	3,171.50	1.49	10,195.50	5.02	10,955.00	6.94	29,273.45	3.58
Electro Music	—	—	2,116.26	1.38	10,144.40	4.76	—	—	—	—	12,260.66	1.50
Music Man	—	—	—	—	—	—	2,267.50	1.12	9,187.50	5.82	11,455.00	1.40
Gretsch	—	—	885.00	0.58	8,104.50	3.81	—	—	2,265.50	1.44	11,255.00	1.38
Corwin Vega	—	—	—	—	—	—	—	—	420.50	0.27	420.00	0.05
Shure	—	—	—	—	1,996.00	0.94	—	—	—	—	1,996.00	0.24
MSA	332.50	0.37	747.50	0.49	—	—	—	—	—	—	1,080.00	0.13
Beckman	—	—	—	—	—	—	1,110.00	0.55	2,249.40	1.43	3,359.40	0.41
Rickenbacker	—	—	—	—	1,397.50	0.66	1,810.00	0.89	294.00	0.19	3,501.50	0.43
Altec	—	—	325.00	0.21	399.00	0.19	—	—	—	—	724.00	0.09
Merson	270.00	0.30	—	—	—	—	—	—	249.75	0.16	519.75	0.06
Ampeg	—	—	835.00	0.55	—	—	—	—	—	—	835.00	0.10
Apex	—	—	—	—	247.75	0.13	—	—	—	—	274.75	0.03
Plush	—	—	650.00	0.42	—	—	—	—	—	—	650.00	0.08
Sunn	647.56	0.72	—	—	—	—	—	—	—	—	647.56	0.08
Travis Bean	—	—	—	—	—	—	—	—	625.00	0.40	625.00	0.08
JED	605.00	0.67	—	—	—	—	—	—	—	—	605.00	0.07
Micro Instr.	297.50	0.33	—	—	—	—	—	—	—	—	297.50	0.04
Yamaha	—	—	370.00	0.24	330.00	0.15	—	—	—	—	700.00	0.09
Chesbro	—	—	372.00	0.24	—	—	—	—	—	—	372.00	0.05
Oberheim	—	—	—	—	—	—	—	—	594.00	0.38	594.00	0.07
TOTAL	$90.425.36	100.00%	$152,980.38	100.00%	$212,924.49	100.00%	$203,091.42	100.00%	$157,782.27	100.00%	$817.203.92	100.00%

Note: Percentage totals may not add due to rounding.

[1]Only includes electric guitars, acoustic guitars and amplifiers with a wholesale cost of over $150 per unit and synthesizers with a wholesale cost of over $500/unit.

[2]Following the May 29, 1979 court appearance, the file of 1973 synthesizer invoices could not be found. Figures for 1973 synthesizers for this analysis were taken from the worksheet of the previous analysis. The prior worksheets set forth synthesizer purchases of $1,600 by Norlin and $777 by ARP.

[3]Includes all pure amplifiers plus units which are sold as a package of components including amplifiers and separate speakers.

Source: Purchase invoices provided by Progressive Music.

CERTIFICATE OF SERVICE

The undersigned a member of the bar of the United States Supreme Court, hereby certifies that three true and correct copies of the above and foregoing Reply Brief of Petitioners Clair Olsen and Guitar City Studios, Inc. in Reply to Respondent Peavey Electronics Brief in opposition to Petitioners Petition for Certiorari have been either personally delivered or placed postage prepaid, first class in the United States Mail, to the following:

CURTIS L. FRISBIE, JR.
1500 Diamond Shamrock Tower
Dallas, Texas 75201

STEPHEN G. CROCKETT
185 So. State St., Suite 1300
Salt Lake City, Utah 84111

BRYCE E. ROE
340 East 400 South
Salt Lake City, Utah 84111

RICHARD W. GIAUQUE
500 Kearns Building
Salt Lake City, Utah 84101

ROBERT A. MACKEY
4024 Redford Ave.
Studios City, CA 91604

DATED this ..... day of August, 1983.

By .....
Lowell V. Summerhay

SUMMERHAYS, WELLS & CLAWSON

By .....
Edward T. Wells

By .....
W. Andrew Clawson